

Troutman Pepper Hamilton Sanders LLP
Bank of America Plaza, 600 Peachtree Street NE, Suite 3000
Atlanta, GA 30308



troutman.com

John "Evan" Gibbs III
evan.gibbs@troutman.com

Magistrate Judge Steven Locke
Eastern District of New York

September 13, 2024

**Re: *SiteOne Landscape Supply, LLC v. Giordano, et al.* (Case No. 2:23-CV-02084)
SiteOne's Response to Defendants' Motion for Extension of Time to File Responses
to SiteOne's Motions to Compel**

Dear Judge Locke,

This firm is counsel to Plaintiff SiteOne Landscape Supply, LLC ("SiteOne"). We write in response to Defendants' motion for an extension of time to file responses to SiteOne's motions to compel. [Dkt. No. 164.] For the reasons set forth below, SiteOne respectfully requests that: (i) the Don Defendants¹ be required to respond to SiteOne's two motions to compel directed to the Don Defendants [Dkt Nos. 154, 158] by September 17 or 18 (in time for this Court to be able to consider those issues at the conference scheduled with this Court on September 19); and (ii) the Vic Defendants be required to respond to SiteOne's motions to compel directed to the Vic Defendants [Dkt Nos. 152-153, 155-157] by September 27.²

With respect to the Don Defendants, they requested an extension of time to respond to SiteOne's two motions to compel directed to them from September 16 to September 20 (the day *after* the parties will be in front of Your Honor on other discovery matters). The two motions in question — each three pages long — are not complicated, involving a limited number of fairly narrow discovery disputes. The Don Defendants have had the same attorneys for the duration of this litigation who are intimately familiar with the facts and issues raised by these two discovery motions.

Their request to postpone the submission of their responses is a thinly-veiled attempt to stall the adjudication of these issues beyond the September 19 conference scheduled with this Court. It is unreasonable for the Don Defendants to wait until after the upcoming conference to respond to these motions, especially since Your Honor has indicated your intent to address multiple other outstanding discovery issues at the conference. There is no reason that the Don Defendants cannot timely respond to these motions before the conference scheduled for next week so as to provide Your Honor the ability and opportunity to address the issues to enable the parties to keep

¹ The "Don" Defendants are Dominick "Don" Caroleo; 9 4th St. LLC; The Garden Dept. Corp.; and 3670 Route 112 LLC. The Vic Defendants are Victor "Vic" Caroleo; Nicholas "Nick" Giordano, Narrow Way Realty Ltd.; Narrow Way 2, LLC; Group 5 Associates Ltd.; Scapes Supply, LLC; and Neway Management, LLC.

² Defendants emailed the undersigned on September 12, 2024 at 2:04 p.m. requesting that SiteOne consent to Defendants' request for an extension of time to file oppositions to SiteOne's motions to compel. The undersigned responded, consenting to an extension of the Don Defendants' deadline to file oppositions to the motions to compel directed to the Don Defendants to September 17 and an extension of the deadline to file oppositions to the motions to compel directed to the Vic Defendants to September 27. SiteOne explained the reasons for its position, which are outlined herein.

discovery moving. SiteOne thus asks that the Don Defendants be required to respond to the two motions directed to them by September 17 or 18.

With respect to the Vic Defendants, as detailed in SiteOne's August 19 Motion to Compel and for Sanctions [Dkt. No. 141] and September 10 Motions to Compel [Dkt. Nos. 152-158], SiteOne served its discovery requests on April 25, 2024. Since then, the Vic Defendants have done absolutely everything in their power to delay discovery. They have refused to produce documents they agreed to produce (and have only produced 17 to date). They have refused to respond to basic interrogatories. And they have objected completely to even the most basic requests for production. Then, with mere days before the date by which the Vic Defendants assured SiteOne they would produce responsive documents, the Vic Defendants changed counsel, further delaying their production.

The Vic Defendants' new counsel now also seek an extension of time to respond to SiteOne's motions to compel from September 16 to October 11. While SiteOne understands that the Vic Defendants recently retained new counsel, such counsel is intimately familiar with the issues in this action, as they have been counsel to the Don Defendants since the inception of this case. Thus, the Vic Defendants' retention of new counsel cannot be a basis for an almost four-week extension of time to respond to these motions. The Vic Defendants assert that their reason for requesting such a lengthy extension is due to their present inability to review the Vic Defendants' files. However, the overwhelming majority of the issues identified in SiteOne's motions to compel as to the Vic Defendants do not require the review of documents to respond.

For example, the motion to compel as to Vic takes issue with his objections and responses to SiteOne's discovery requests, including those requesting that he identify all banks he has used during the applicable time period; to identify the entities he has been a shareholder of; and to produce documents relating to the Horseblock Road property. Vic asserts blanket objections to practically every discovery request SiteOne identified in its motion [Dkt. 152]. The issue presented is thus not whether Vic has responsive documents; the issue is whether he is going to substantively respond to the requests or not. There is no need for counsel to undertake a review of documents from the Vic Defendants to address these issues. This holds true for the motions to compel addressed to each of the Vic Defendants [Dkt Nos. 152-153, 155-157]. Discovery as to the Vic Defendants has been at a standstill for months now, and they should not be permitted to indefinitely delay discovery simply because they retained new counsel.

SiteOne simply seeks timely responses to its motions to compel in order to ensure Your Honor has the opportunity to adjudicate the issues addressed therein so as to ensure the parties can expeditiously complete discovery. SiteOne thus requests that the Vic Defendants respond to the motions to compel directed to them [Dkt Nos. 152-153, 155-157] by September 27, which provides Defendants' counsel more than two weeks to respond to the motions.

We thank Your Honor for your attention to this matter.



John "Evan" Gibbs III